Supreme Court No. 81672-7
Court of Appeals No. #60054-1-I

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION ONE

SKAGIT COUNTY, DEPUTY DEANNA RANDALL;

Petitioners

v.

JOHN T. LALLAS AND IRENE LALLAS, husband and wife

Respondents

On Appeal from the Superior Court of the
State of Washington for Snohomish County
The Honorable Kenneth Cowsert

REPLY TO AMICUS BRIEFS

Attorney for Respondents:

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1. The issue of whether the deputy was employed by the court as a bailiff or the county as a deputy has not been previously raised and is not supported by the record. It should therefore not be reviewed.

The amicus brief of the Washington Association of Prosecuting Attorneys ("Prosecuting Attorneys") introduces a new issue that has not been previously raised or argued. More specifically, the Prosecuting Attorneys assert for the first time that Deputy Randal was acting not as an agent of the County (her employer and co-defendant), but rather as an agent of the court. Because this issue has not been previously raised, there is no basis for its review under RAP 2.5 (a), nor does the record provide any factual support for this allegation.

Contrary to the assertion that Deputy Randall was a bailiff to the court, the Declaration of Deanna Randall (CP 115-117), indicates that she was employed by the Skagit County Sheriff as a Corrections Deputy. On the date of the accident, she was assigned to duty as a "court rover", and therefore had responsibility for responding to security issues in both the Superior Court and the District Court, even though both courts were in different buildings. Rather than being on the court staff, Randall was

"advised by radio to report to District Courtroom #1 to escort someone to jail for booking". Upon entering the courtroom, she was told only to take the prisoner "to be booked for jail" and in her declaration, she specifically acknowledges that other than making this order, Judge Skelton said nothing further to her.

Deputy Randall's interaction with the court on the date of the accident was therefore purely transitory and limited to a single transaction. At best she was first ordered to come to the courtroom and then she was ordered to escort the prisoner. Beyond these two orders, the record fully substantiates that Deputy Randall was a County employee and not the court bailiff.

The attempted introduction of this new issue by the Prosecuting Attorneys does not involve: (1) a claim of lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, or (3) manifest error affecting a constitutional right and therefore, there is no basis for review of this issue, as contemplated by RAP 2.5(a).

Further, the introduction of this issue of Deputy Randall's employer does not, in any way, address the underlying issue of whether or not judicial immunity exists for the actions of Deputy Randall. For these

reasons, the Court should not consider the issue of whether it was the county or the court that employed Deputy Randall.

2. The negligent act involved an "operational" or "ministerial" function and did not involve judicial decision making or discretion. As such, the doctrine of absolute judicial immunity does not apply.

As was emphasized in the amicus brief of the Washington State Association for Justice ("Foundation"), there is a functional analysis that is common not only to cases involving questions of judicial and quasi-judicial immunity, but also to other types of governmental and legislative immunity as well. Mason v. Bitton, 85 Wn. 2d 321, 534 P.2d 1360 (1975), Mission Springs, Inc. v. City of Spokane, 134 Wn.2d 947, 954 P.2d 250 (1998). According to this analysis, it is not the person, or the title of the person that is to be protected and preserved through the doctrine of immunity. Rather, it is the function that the person performs that needs to be examined and evaluated. Lutheran Day Care v. Snohomish, 119 Wn.2d 91, 829 P.wd 746 (1992).

If that function, involves judicial or legislative decision making, it is to receive the protection of the doctrine of immunity. However, if the negligent act or omission falls into the category of 'operational' or 'ministerial' functions-not involving executive or administrative

discretion- the doctrine does not apply. Evangelical United Brethren Church v. State, 67 Wn.2d 246, 407 P.2d 440 (1965).

In the present case, the negligent act did not occur when Judge Skelton ordered that the prisoner be taken to jail and in fact did not occur until after the deputy and the prisoner had completely left the courtroom. The judge had already exercised his judicial judgment and discretion by ordering that the prisoner be transported to jail. How the prisoner was transported to jail was left entirely up to the deputy as Judge Skelton told the deputy only to take the prisoner to jail and said nothing more to her.

The transport of the prisoner involved only an operational or ministerial act. As such, the doctrine of absolute judicial immunity does not apply.

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